IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEALNO.1229 OF 2005

Nyamatbi Sultan Mulani and Ors. ..Appellants
Versus
Allabaksha Abdul Mulani and Ors. ..Respondents

Ms Leena Patil i/b P.M.Pradhan for appellants

CORAM : P.V.KAKADE, J.

DATE : 11TH OCTOBER, 2005.

P.C.:

1. The appellants have preferred this appeal against the judgment and order passed by Addl. District Judge Sangli dismissing the appeal and confirming the judgment and order passed by Joint Civil Judge, Junior Division, Sangli dismissing the plaintiffs' suit by order dated 3.2.2000.

2. I have heard the learned counsel for the appellants. Perused the appeal.

3. The plaintiffs filed the suit for redemption of mortgage, which was executed by grand father of plaintiff no.4 in favour of father of defendant nos.1 to 6 for Rs.900/=. The defendants challenged the suit on various ground, inter alia, denying the allegations made

by the plaintiffs and submitted that it was not mortgage but it was sale deed with condition to repurchase and as such sought dismissal of the suit.

. The learned trial judge adjudicated the dispute on merits and came to the conclusion that suit transaction was not mortgage transaction and the document was that of sale to conditional with repurchase and as such the suit came t be dismissed. The appeal was carried to the District Court. The learned Addl. District judge after hearing both the parties concurred with the findings recorded by the trial judge and dismissed the appeal. Hence the present appeal.

4. At the outset it must be noted that there is absolutely no substantial question of law involved in this appeal. The only question involved, as per the learned counsel for the appellants, is with regard to the interpretation of the suit transaction. Copy of the document was made available for my perusal, which described is to be "SHARTI KHAREDI PATRA" i.e. Sale with Condition to Repurchase and not mortgage. Even both the courts have discussed elaborately the nature of the document and have concluded that the real intention

of the parties was not to create mortgage but it was sale with condition to repurchase and as such the plaintiffs' case was held to be not established. It was further held by the Lower Appellate Court that the plaintiffs failed to establish that it was conditional mortgage as well as the fact to that the plaintiffs had sought redemption of the alleged mortgage. On the other hand, it was held that the plaintiffs had lost right to repurchase the suit land in view of the condition embodied in the suit deed. Under the circumstances, both the courts have recorded concurrent findings to the effect that the plaintiffs have not proved that the suit transaction was mortgage transaction.

5. It is to be noted that concurrent findings of facts howsoever erroneous cannot be disturbed by the High Court in exercise of the powers under Section 100 of C.P.C. and it is not within the domain of High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court. It especially so when the evidence is found to be properly appreciated by both the courts below, therefore, it would brook no interference.

. In the result the appeal stands dismissed.